rounding property. In a suit by residents of the neighborhood, *held,* that although a funeral home is not a nuisance *per se,* under the circumstances of this case it must be held to be such; and an injunction will issue to restrain the use of the premises for that purpose. *Meagher* v. *Kessler* (Minn., 1920), 179 N. W. 733.

The court places the funeral home in the same category as undertaking establishments, which uniformly have been held not to be nuisances *per se.* They become nuisances, however, when they are conducted in a residential district, and where their effect is to impair the enjoyment of the neighboring premises and to decrease the value of the property in the neighborhood generally. There are but few cases on the subject, most of which are collected in a note to *Goodrich* v. *Starrett,* 108 Wash. 437, 184 Pac. 220, in 18 MICH. L. REV. 246. See also 19 MICH. L. REV. 111, commenting on *Beisel* v. *Crosby* (Neb., 1920), 178 N. W. 272.

RES IPSA LOQUITUR—RELATION TO BURDEN OF PROOF.—In an action for negligent burning of timber on the plaintiff's land there was some evidence that the fire originated from sparks emitted from one of the defendant's engines. The court recognized that the case was a proper one for the application of the doctrine of *res ispa loquitur,* and in its instruction to the jury imposed upon the defendant the burden of satisfying the jury by a preponderance of the evidence that it was not negligent. *Held,* instruction erroneous. The doctrine of *res ipsa loquitur* does not change the burden of proof, but merely makes a prima facie case in favor of the plaintiff and places on the defendant the burden of going forward with the evidence. *Page* v. *Camp Mfg. Co.* (N. C., 1920), 104 S. E. 667.

The court in the instant case correctly states what is now the prevailing view as to the relation between the doctrine of *res ipsa loquitur* and the burden of proof. The principle is applied where the circumstances of the occurrence are such as to warrant the inference of negligence and makes it incumbent upon the defendant to adduce evidence in rebuttal if he desires to do so. *Sweeney* v. *Erving,* 228 U. S. 233; *Kay* v. *Metropolitan St. Ry. Co.,* 163 N. Y. 447; *Everett* v. *Foley,* 132 Ill. App. 438. South Carolina supports the view that the burden of proof is thereby shifted. *Sullivan* v. *Charleston & W. C. R. Co.,* 85 S. C. 532. Instructions similar to those given in the instant case were upheld in *Atlantic Coast Line R. Co.* v. *Jones,* 132 Ga. 189. For many other cases approving similar instructions see note in L. R. A. 1916A 930. Even in many cases which recognize the theoretical soundness of the rule that the burden of proof never shifts confusion has been introduced into the law in deciding whether or not given instructions are in conformity to the rule. This has been due to a misapprehension of the correct meaning of the terms "burden of proof" and "preponderance of the evidence" or to a loose employment of these terms. *Furnish* v. *Mo. P. R. Co.,* 102 Mo. 438; *Baum* v. *N. Y. Q. C. R. Co.,* 124 App. Div. 12; *Abrams* v. *Seattle,* 60 Wash. 356; *Carroll* v. *Boston Elev. R. Co.,* 200 Mass. 527. Some of these courts have suggested that a loose or unscientific use of these terms will not

confuse the jury, and that therefore instructions to the effect that "the burden of proof has shifted to the defendant" or "the defendant must prove by a preponderance of the evidence that he was not negligent" are not prejudicially erroneous. But it would seem that if these terms have a well-defined legal meaning, their correct use should be insisted upon, even at the risk of reversal on what seem purely technical grounds. Such is the view of the United States Supreme Court in *Sweeney* v. *Erving, supra,* which is approved in the instant case. As to whether the presumption of negligence requires or merely permits a verdict for the plaintiff if the defendant produces no evidence in rebuttal, the decisions are not in harmony. See *Sweeney* v. *Erving, supra,* and *Briglio* v. *Holt,* 85 Wash. 155. See WIGMORE, par. 2509, for rules governing the application of the doctrine of *res ipsa loquitur.*

SLANDER—"CROOK" NOT SLANDEROUS PER SE.—It was alleged that defendant said of plaintiff, "Madame is a crook," and that the words imputed commission of crime involving moral turpitude or infamous punishment. *Held,* the innuendo is not supported by reason or authority; that "crook" is applied to persons who are not guilty of crime, and as no special damage is alleged the cause is dismissed on demurrer. *Villemin* v. *Brown,* 184 N. Y. S. 570.

In the English courts and the majority of American courts it is the duty of the court to determine whether the language used in the publication can fairly or reasonably be construed to have the meaning imputed, and if the court determines it is *capable* of such construction it is then left to the jury to decide in what sense the language was used. *Hankinson* v. *Bilby,* 16 M. & W. 441; *Shubley* v. *Ashton,* 130 Ia. 195; *Downs* v. *Hawley,* 112 Mass. 237; *Langer* v. *Courier News,* 179 N. W. 909. On the other hand, in some jurisdictions, including that of the principal case, when the words are free from ambiguity or evidence tending to change their natural meaning, whether they are slanderous or libellous *per se* or not is passed upon by the court as a matter of law. *Cooper* v. *Greeley,* 1 Denio (N. Y.) 347; *More* v. *Benett,* 48 N. Y. 472; *Pugh* v. *McCarty,* 44 Ga. 383; *Gottbehuet* v. *Hubachek,* 36 Wis. 515; *Gabe* v. *McGinnis,* 68 Ind. 538. Determined either as a matter of fact or of law, it would seem that "crook" means a person liable to imprisonment for crime. The court in the principal case apparently treats of "crook" and "crooked" as synonymous. This may have been a source of error. While neither term is credited with a precise meaning, "crooked" commonly denotes failure to abide by the prevailing morality, whereas "crook" is a term carrying greater opprobrium, and ordinarily suggests a person who gains a livelihood by committing felonies. The class of slanders *per se* is a rigid one, but not without reason, and, as the principal case holds, whenever a plaintiff has suffered actual damage he is always at liberty to show it and recover for it.

STREET RAILROADS—CONTRIBUTORY NEGLIGENCE IN FAILING TO STOP AND LOOK A QUESTION OF FACT.—Plaintiff, while crossing defendant's street railway track, was struck by a street car and severely injured. Plaintiff's auto-